# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-894

WILLIAM B. RICHARDSON, PETITIONER

*v.*

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner filed this suit in the United States District Court for the Western District of Pennsylvania, requesting the convention of a three-judge court to declare that certain sections of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403a *et seq.*, are repugnant to Article I, Section 9, clause 7 of the Constitution (Pet. App. 16a–17a).[1] The district court

[1] Prior to instituting this suit, petitioner had filed a similar suit which was dismissed by the district court on standing grounds. *Richardson* v. *Sokol*, 285 F. Supp. 866 (W.D. Pa.). The Third Circuit affirmed that judgment on the jurisdictional ground that respondent had failed to allege that $10,000 was in issue and denied leave to amend the complaint (409 F. 2d 3), and this Court denied a petition for a writ of certiorari (396 U.S. 949). Petitioner then filed this suit alleging jurisdiction under, *inter alia*, 28 U.S.C. 1361.



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dismissed the action, concluding that under *Flast* v. *Cohen*, 392 U.S. 83, petitioner lacked standing as a taxpayer to challenge the Act and that the case presented non-justiciable political questions (Pet. App. 18a–20a). Prior to a decision on appeal, petitioner filed a petition for a writ of certiorari before judgment, asking this Court to decide the issues of standing and justiciability as well as the merits. This Court denied certiorari. 404 U.S. 991.

The court of appeals then reversed the judgment of the district court, holding that petitioner had standing and remanding the case with directions to convene a three-judge court to consider both the political question issue and the case on the merits. 465 F. 2d 844.[2] The United States has filed a petition for a writ of certiorari to review that decision. *United States* v. *Richardson*, No. 72–885.

Petitioner has now also filed a petition for a writ of certiorari from the decision below, asking in effect that the Court consider the question of justiciability and the merits prior to a decision by the three-judge court. Neither court below has yet addressed itself to the merits, and the court of appeals expressly left the question of justiciability to the three-judge district court. In these circumstances the petition should be denied, because petitioner has not shown that this

[2] The district court stayed the convention of a three-judge court pending disposition of the government's petition for a writ of certiorari. On September 26, 1972, the Third Circuit denied petitioner's petition for mandamus to compel the immediate convention of a three-judge court.

case is of such imperative public importance to require immediate settlement in this Court of issues not yet considered below. See Rule 20 of the Rules of this Court. See, also, our memorandum in opposition in *Richardson* v. *United States,* No. 71–433.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

FEBRUARY 1973.

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